IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/04/2004

CORAM

THE HONOURABLE MR.JUSTICE K.GNANAPRAKASAM

Tr.CMP.No.16403 of 2003 and Tr.CMP.No. 19040 of 2003
and
CMP.Nos.16404 and 19041 of 2004

K.N.Vijayalakshmi ... Petitioner in Tr.CMP.No.16403 of 2003
Respondent in TR.CMP.No.19040 of 2003

-Vs-

R.S.Sivakumar ... Respondent in Tr.CMP.No.16403 of 2003
Petitioner in Tr.CMP.No.19040 of 2003

Tr.CMP.No.16403 of 2003 has been filed to withdraw HMOP.No.173 of 20
03, pending on the file of the Family Court, Coimbatore and transfer the same
to the I Additional Family Court at Chennai.

Tr.CMP.No.19040 of 2003 has been filed to withdraw MC.No.293 of 2003
pending on the file of the I Additional Family Court, Chennai, and try the
same along with HMOP.No.173 of 2003, pending on the file of the Family Court,
Coimbatore.

!For Petitioner : Mr.Satyanarayanan in
Tr.CMP.No.16403 of 2003

Mr.P.Santhosh Kumar in
Tr.CMP.No.19040 of 2003

^For Respondent : Mr.P.Santhosh Kumar
Tr.CMP.No.16403 of 2 003

Mr.Satyanarayanan in
Tr.CMP.No.19040 of 2003

:ORDER

Tr.CMP.No.16403 of 2003 has been filed by the wife to withdraw
HMOP.No.173 of 2003, from the file of the Family Court, Coimbatore and
transfer the same to the I Additional Family Court at Chennai.

2. Tr.CMP.No.19040 of 2003 has been filed by the husband to withdraw
MC.No.293 of 2003 from the file of the I Additional Family Court, Chennai, to

try along with HMOP.No.173 of 2003, pending on the file of the Family Court, Coimbatore.

3. For the purpose of convenience, the parties will be arrayed as they are arrayed in Tr.CMP.No.16403 of 2003. The petitioner, in the affidavit filed in support of the petition, has stated that she was married to the respondent on 14.05.2000, according to Hindu Rites and Customs. The petitioner stated that she was ill-treated and subjected to physical and mental cruelty and she also came to know that the respondent is living in adultery with another woman. The petitioner's effort to separate them ended in vain and the respondent started illtreating her and treated brutally and even made her to starve for food. The petitioner was unable to comply with the unreasonable demand made by the respondent to allow the other woman to stay with her and hence she was driven from the matrimonial home on 17.01.2002 and since that time she has been living with her parents. The efforts made by the elders also ended in vain. Only in the said circumstances, the petitioner filed M.C.No.293 of 2003 on the file of the Family Court at Chennai. It is stated that the said Matrimonial case was dismissed for default in December,2003 and fresh case was filed in M.C.No.24 of 2004 and it is stated that the M.C. was ordered by the Family Court, thereby directing the respondent to pay the maintenance at the rate of Rs.2000/- per month. Despite the order of maintenance by the Family court, the respondent had not paid any amount till today.

4. The petitioner has also stated that she was attending the Family Court at Coimbatore regularly and also filed counter in HMOP.No.173 of 2003 filed by the respondent. But now, the petitioner joined Cookery course in Kothari Institute at Chennai in order to forget her worries and in the said circumstances, it would be very difficult for her to leave Chennai and attend the Court at Coimbatore. She has also stated that she is unemployed and she is mainly depending upon her aged father. Only in the said circumstances, the wife seeks the transfer.

5. The respondent filed a separate Tr.CMP.No.19040 of 2003, wherein he has admitted the marriage between him and the petitioner which took place on 14.05.2000. The respondent has stated that after marriage, he was living at Tirumangalam and there he noticed that the behaviour of the petitioner was strange and indifferent and she did not show any interest in the matrimonial affairs. At that time, the respondent was working at the computer Center at Coimbatore and he was residing in a separate house. Some time thereafter, the petitioner's parents came to Coimbatore and took her to Chennai and thereafter she did not return to Coimbatore in spite of several requests and demands made by him. Only in the said circumstances, the respondent issued a notice and thereafter filed the present HMOP.No.173 of 2003 for divorce which is pending before the Family Court.

6. Heard the learned Advocate for the petitioner and the respondent.

7. The Learned Advocate for the petitioner would contend that even though the wife was directed to live with the respondent/husband, he had not come forward to disassociate himself from the other woman with whom he was

having affair even before the marriage and as a matter of fact, it is stated that the respondent's mother advised the petitioner to pursuade the respondent to give up his relationship with the other lady and the petitioner could not succeed. The respondent has been continuously residing with the other woman and in the said circumstances, he hates her and is not giving all the marital happiness to the petitioner herein which alone warranted the petitioner to leave the family and reside with her parents. It is also pointed out that the respondent had not taken any care to maintain the petitioner till today, in view of the fact that the petitioner had already filed the maintenance case and the same was also ordered in her favour thereby directing the respondent to pay maintenance at the rate of Rs.2000/-. It is pointed out that the respondent is not at all interested in taking care of the wife nor he is interested in living with her and in the said circumstances, the petitioner has joined in the Cookery course in Kothari Institute at Chennai to forget all the worries and she is residing with her parents at Madras and it would be very difficult for her to travel from Chennai to Coimbatore to take part in the proceedings at Coimbatore.

8. On the contrary, the learned Advocate for the respondent/husband contended that the respondent is always interested in taking back the wife and she is not willing to join with him. He also denies the averments made against him. The respondent also states that proceedings in the HMOP at Coimbatore had already commenced and it may not be difficult for the petitioner to take part in the proceedings at Coimbatore and complete the same. By stating so, the respondent opposed the transfer, as prayed for by the petitioner.

9. After hearing the arguments of either side, it is made out that after the marriage both the petitioner and the respondent lived together at Coimabatore. It appears that during the said period the petitioner has noticed that the respondent is having illicit intimacy with another woman and the petitioner pursuaded him to give up his connection with that lady, but she could not succeed in her attempt. The petitioner also stated in the counter filed in HMOP.No.173 of 2003, that even the respondent's mother requested the petitioner to bring out the respondent from the clutches of the other woman with whom he is having illicit relationship. It is the case of the petitioner that she tried her level best to reform the respondent, but she could not succeed. When such wild allegation has been made against her husband, it is highly impossible for the woman, who wants to be sincere and dutiful to live with the husband. But, the husband did not give up his connection with the other lady, in spite of the fact that it is brought to notice that he had connection with the other lady, not only by the petitioner, but by the mother of the respondent also. Only in the said circumstances, the petitioner has chosen to live with her parents. Even during the said period, it appears that the respondent has not chosen to make any attempt to console the petitioner and also give up his intimacy with the other lady and to run the family peacefully and therefore, the petitioner was driven to the necessity of filing the maintenance case claiming maintenance and maintenance was also ordered in favour of the petitioner. Despite the order passed by the Family Court, the petitioner has not come forward to pay the maintenance amount to the petitioner. When such is the case, it would be very difficult for her to

attend the Court at Coimbatore where HMOP filed by the respondent is pending.

10. Hence, I am of the considered view that the balance of convenience is only on the part of the petitioner who being the lady and she has also joined in the Cookery course at Chennai to forget all her worries, it would not be advisable to direct her to take proceedings at Coimbatore which is nearly 460 kms away from the city of Madras, where she is residing now.

11. On the other hand, it may not be difficult for the respondent to take part in the proceedings at Chennai. The only difficulty that would be faced by the respondent is attending the Family Court for every hearing for which I feel that necessary safe guard may be given to him.

12. In the result, the Tr.CMP.No.16403 of 2003, filed by the wife is allowed and thereby the HMOP.No.173 of 2003 pending on the file of the Family Court, Coimbatore is withdrawn and posted before the I Additional Family Court at Chennai. Consequently, Tr.CMP.No.19040 of 2003 filed by the respondent husband is dismissed. Consequently, connected CMPs are closed. No costs.

13. But, however the respondent/husband is permitted to be represented by his Amicus Curie before the Family Court subject to the condition that he should attend the Family Court as and when he is being specifically directed to do so.

Index:yes
Internet:yes

ksr

To
1. The Family Court, Coimbatore
2. The I Additional Family Court,
Coimbatore.